misuse for the benefit of organizations under common control with the bank. It was designed to prevent a bank from risking too large an amount in affiliated enterprises and to assure that extensions of credit to affiliates will be repaid—out of marketable collateral, if necessary.

(c) Since 1968 the Board has permitted member banks to establish and own operations subsidiaries—that is, organizations designed to serve, in effect, as separately incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly (12 CFR 250.141). Since an operations subsidiary is in effect a part of, and subject to the same restrictions as, its parent bank, there appears to be no reason to limit transactions between the bank and such subsidiary any more than transactions between departments of a bank.

(d) Accordingly, the Board has concluded that a credit transaction by a member State bank with its operations subsidiary (the authority for which is based on the 1968 ruling) is not a ''loan or * * * extension of credit'' of the kind intended to be restricted and regulated by section 23A and is, therefore, outside the purview of that section.

[35 FR 10201, June 23, 1970]

§250.241 Exclusion from section 23A of the Federal Reserve Act for certain transactions subject to review under the Bank Merger Act.

(a) *Grant of Exemption.* Section 23A of the Federal Reserve Act shall not apply to a transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate federal banking agency pursuant to the Bank Merger Act.

(b) *Definitions.* For purposes of this section, the terms ''appropriate federal banking agency'' and ''insured depository institution'' are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act.

[57 FR 41644, Sept. 11, 1992]

§250.242 Section 23A of the Federal Reserve Act—definition of capital stock and surplus.

(a) An insured depository institution's capital stock and surplus for purposes of section 23A of the Federal Reserve Act (12 U.S.C. 371c) is:

(1) Tier 1 and Tier 2 capital included in an institution's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the institution's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of an institution's allowance for loan and lease losses not included in its Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the institution's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(b) For purposes of this section, the terms *appropriate Federal banking agency* and *insured depository institution* are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[61 FR 19806, May 3, 1996]

§250.250 Applicability of section 23A of the Federal Reserve Act to a member State bank's purchase of, or participation in, a loan originated by a mortgage banking affiliate.

(a) A question has been raised as to whether a member bank's purchase, without recourse, and at face value, of any mortgage note, or participation therein, from a mortgage banking subsidiary of its parent bank holding company at the inception of the underlying mortgage loan involves a ''loan'' or ''extension of credit'' from the member bank to the affiliate within the meaning of section 23A of the Federal Reserve Act (12 U.S.C. 371c). In the given circumstances, the affiliate originated the mortgage loans at premises other than an office of the member bank and hence was not a company furnishing services to or performing services for the holding company or its banking

subsidiaries within the meaning of section 4(c)(1)(C) of the Bank Holding Company Act (12 U.S.C. 1843(c)(1)(C)). Loans or extensions of credit to the affiliate were therefore not entitled to exemption from the provisions of section 23A by virtue of subsection (1) of the final paragraph thereof.

(b) Paragraph 4 of section 23A provides that the term *extension of credit* shall be deemed to *include* the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse, excepting the acquisition of such paper by a member bank from another bank without recourse. In previously interpreting the statutory provision from which this provision is derived (section 6 of the Bank Holding Company Act of 1956, repealed July 1, 1966), the Board concluded that *discount* in the context of the statute meant *purchase* and that the purchase of notes, bills of exchange, conditional sales contracts or similar paper from an affiliate was subject to the prohibitions of the statute. (1958 Federal Reserve Bulletin 260.) Further, the Board notes that the definition in section 23A is illustrative rather than exclusive. The Board believes that the purposes of section 23A justify a broad construction of the definition of *extension of credit* to include certain purchases of obligations, even though the purchases are not made at a discount from face value. A bank's financing of the working capital needs of a mortgage banking affiliate may occur through outright purchases of obligations, and the types of abuses with which section 23A is concerned are likewise possible in such circumstances, since such transactions between affiliates could result in an undue risk to the financial condition of the purchasing bank.

(c) The Board is of the opinion that the purchase by a member State bank of a mortgage note, or participation therein, from a mortgage banking affiliate would involve a loan or extension of credit to the affiliate if the latter had either made, or committed itself to make, the loan or extension of credit evidenced by the note prior to the time when the member bank first obligated itself, by commitment or otherwise, to purchase the loan or a participation therein. However, there would be no loan or extension of credit by the member bank to its mortgage banking affiliate if the member bank's commitment to purchase the loan, or a participation therein, is obtained by the affiliate within the context of a proposed transaction, or series of proposed transactions, in anticipation of the affiliate's commitment to make such loan(s), and is based upon the bank's independent evaluation of the credit worthiness of the mortgagor(s). In these latter circumstances, the member bank would be taking advantage of an investment opportunity rather than being impelled by any improper incentive to alleviate working capital needs of the affiliate that are directly attributable to excessive outstanding commitments.

(d) The Board cautions, however, that it would regard a blanket advance commitment by a member State bank to purchase from its mortgage banking affiliate a stipulated amount of loans, or an amount thereof exceeding defined credit lines of the affiliate, that bears no reference to specific proposed transactions, as involving an unsound banking practice, unless the commitment is conditioned upon compliance of loans made thereunder with the requirements of section 23A. It would not suffice to condition such a commitment upon the bank's ultimate approval of the credit standing of the various mortgagors. That blanket commitment would have the inherent tendency, in the context of an affiliate relationship, to cause the bank to relax sound credit judgment concerning the individual loans involved when the affiliate was in need of bank financing, thereby resulting in an inappropriate risk to the soundness of the bank.

(Interprets and applies 12 U.S.C. 371c)

[39 FR 28975, Aug. 13, 1974]

§ 250.260 Miscellaneous interpretations; gold coin and bullion.

The Board has received numerous inquiries from member banks relating to the repeal of the bank on ownership of gold by United States citizens. Listed below are questions and answers which affect member banks and relate to the